

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

ELLISON LEE HUTCHISON, JR.,

Plaintiff,

v.

CIVIL ACTION NO. 1:22-00123

E. ROKOSKY,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order, this action was referred to United States Magistrate Judge Cheryl A. Eifert for submission of findings and recommendations ("PF&R") regarding disposition pursuant to 28 U.S.C. § 636(b)(1)(B). Prior to entry of a PF&R, Hutchison filed a motion to withdraw his petition for a writ of habeas corpus. See ECF No. 18. On October 27, 2022, Magistrate Judge Eifert directed defendant to file a response to Hutchison's motion for voluntary dismissal. See ECF No. 19. Defendant did so, indicating that he did not object to dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2). See ECF No. 20.

Federal Rule of Civil Procedure 41(a)(2) governs plaintiff's request to dismiss his case. In pertinent part, that rule reads:

an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. . . . Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

Federal Rule of Civil Procedure 41(a)(2). The rule itself does not provide any test for when a court should or should not grant a plaintiff's request to dismiss his complaint. However, courts have offered guidance in crafting a ruling on a Rule 41(a)(2) motion. The initial point of law is quite clear: "[a] plaintiff's motion under Rule 41(a)(2) for dismissal without prejudice should not be denied absent substantial prejudice to the defendant." Andes v. Versant Corp., 788 F.2d 1033, 1036 (4th Cir. 1986). While there is a clear preference for granting such motions, "[i]n considering a motion for voluntary dismissal, the district court must focus primarily on protecting the interests of the defendant." Davis v. USX Corp., 819 F.2d 1270, 1273 (4th Cir. 1987).

There being no objection by defendant, plaintiff's motion to dismiss this action is **GRANTED**, this action is **DISMISSED** without prejudice, and the Clerk is directed to remove the matter from the court's active docket.

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to plaintiff, pro se, and counsel of record.

IT IS SO ORDERED this 28th day of November, 2022.

ENTER:



David A. Faber

Senior United States District Judge